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November 21, 2014

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

James Hardie Building Products Inc.
C T Corporation System
Agent for Service of Process
818 West Seventh St. 2nd Fl.
Los Angeles, CA 90017

James Hardie Building Products Inc.
Luis Gries, CEO
26300 La Alameda, Ste 400
Mission Viejo, CA 92691

James Hardie Building Products Inc.
Haemish O'Donnell, Facility Coordinator
Chris Davis, Plant Manager
10901 Elm Avenue
Fontana, CA 92337

**RE: Notice Of Violations And Intent To File Suit Under The Federal Water
Pollution Control Act Concerning James Hardie Building Products, 10901
Elm Ave., Fontana, California 92337, WDID No. 8 36I010349**

Dear Mr. Gries, Mr. O'Donnell and Mr. Davis,

The Law Office of Gideon Kracov (hereinafter "**Office**") on behalf of the Center for Community Action and Environmental Justice (hereinafter "**CCA EJ**") is contacting you concerning Clean Water Act (hereinafter "**CWA**" or "**Act**") violations at James Hardie Building Products Inc.'s facility at 10901 Elm Avenue, Fontana, California 92337 (hereinafter "**Facility**") in San Bernardino County. This letter is being sent to you James Hardie Building Product Inc., Luis Gries, Chris Davis and Haemish O'Donnell, as the responsible owners, officers, or operators of the Facility (collectively hereinafter "**James Hardie**").

CCA EJ is a non-profit public benefit corporation dedicated to working with communities to advocate for environmental justice and pollution prevention. CCA EJ has individual members living in the community adjacent to the Facility and the Santa Ana River Watershed. CCA EJ



and its individual members are deeply concerned with protecting the environment in and around their communities, including the Santa Ana River Watershed.

This letter addresses James Hardie's unlawful discharge of pollutants from the Facility through the municipal storm sewer system into Declez Channel and then into the Santa Ana River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (hereinafter "**NPDES**") Permit No. CA S000001, California State Water Resources Control Board (hereinafter "**State Board**") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "**General Permit**").¹ The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board") is 8 36I010349. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the CWA requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (hereinafter "**EPA**"), and the State in which the violations occur.

As required by the Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, James Hardie is hereby placed on formal notice by CCAEJ that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CCAEJ intends to file suit in federal court against James Hardie under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the CWA and General Permit. These violations are described more extensively below.

I. BACKGROUND.

James Hardie filed a Notice of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (hereinafter "**NOI**") and that NOI can be viewed on the State of California's State Water Resources Control Board website. In its NOI, James Hardie certified that the Facility is classified under SIC Code 3272 (Concrete and Gypsum Products). James Hardie is a fiber-cement product company, specializing in lap sidings, vertical sidings, shingles, panels, pipes, and ceramic tile backer boards. On information and belief, CCAEJ alleges that the 20-acre Facility collects and discharges storm water from its

¹ On April 1, 2014, the State Board reissued the General Permit, continuing its mandate that industrial facilities implement the best available technology economically achievable ("**BAT**") and best conventional pollutant control technology ("**BCT**") and, in addition, establishing numeric action levels mandating additional pollution control efforts. State Board Order 2014-0057-DWQ. The new permit, however, does not go into effect until July 1, 2015. Until that time, the current General Permit remains in full force and effect.

industrial site into five or more storm drain outfalls located at the Facility. The outfalls discharge into the County's municipal storm sewer system, which flows into Declez Channel, which flows into the Santa Ana River.

The Regional Board has identified beneficial uses of the Santa Ana River Watershed and established water quality standards for the river and its tributaries in "The Water Quality Control Plan (Basin Plan) for the Santa Ana River Basin" (hereinafter "**Basin Plan**"). See California Regional Water Quality Control Board, Santa Ana Region, The Water Quality Control Plan (Basin Plan) for the Santa Ana River Basin (2011), available at http://www.swrcb.ca.gov/rwqcb8/water_issues/programs/basin_plan/index.shtml.

The beneficial uses of these waters include, among others, municipal and domestic supply, agricultural supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, cold freshwater habitat, and wildlife habitat. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible." *Id.* at 3-3. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* Contact recreation use includes fishing and wading. *Id.* at 3-2. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of the Santa Ana River for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that "[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health." *Id.* at 4-18. The Basin Plan includes a narrative oil and grease standard which states that "[w]aste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-15. The Basin Plan includes a narrative suspended and settleable solids standard which states that "waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses . . ." *Id.* at 4-16. The Basin Plan includes a narrative floatables standard which states that "[w]aste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-11. The Basin Plan includes a narrative color standard which states that "[w]aste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses." *Id.* at 4-10. The Basin Plan includes a narrative turbidity standard which states that "inland surface waters . . . shall be free of changes in turbidity which adversely affect beneficial uses. *Id.* at 4-18. The Basin Plan provides that "the pH of inland surface waters shall not be raised above

8.5 or depressed below 6.5...” *Id.* at 4-15. The Basin Plan also includes a Nitrate standard of 10 mg/L as Nitrogen. *Id.* at 4-14.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (hereinafter “BAT”) and best conventional pollutant control technology (hereinafter “BCT”). The following benchmarks have been established for pollutants discharged by James Hardie: Total Suspended Solids (TSS) – 100 mg/L, pH – 6-9 s.u., and Iron (Fe) – 1.0 mg/L. U.S. Environmental Protection Agency, Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2009) 52 (hereinafter “MSGP”).

II. ALLEGED VIOLATIONS OF THE NPDES PERMIT.

a. Discharges In Violation Of The Permit Not Subjected To BAT/BCT.

James Hardie has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are Total Suspended Solids, Oil and Grease, pH, Biochemical Oxygen Demand, and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.* §§ 401.15, 401.16.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water

Limitation C(2). As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

James Hardie has discharged and continues to discharge storm water with unacceptable levels of TSS, pH, Iron, and other pollutants in violation of the General Permit. James Hardie's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility contained concentrations of pollutants in excess of numeric water quality standards established in the Basin Plan, evidencing past and ongoing violations of General Permit Discharge Prohibitions A(1) and A(2), Effluent Limitation B(3) and Receiving Water Limitations C(1) and C(2).

Date	Parameter	Observed Concentration	Basin Plan or EPA Water Quality Standard	Outfall (as identified by the Facility)
4/25/2014	pH	9.2 s.u.	6.5-8.5 s.u.	#1 C13
2/6/2014	pH	9.1 s.u.	6.5-8.5 s.u.	#1 R&D Parking Lot
5/6/2013	pH	9.8 s.u.	6.5-8.5 s.u.	C13 Easement #1
1/26/10	pH	9.1 s.u.	6.5-8.5 s.u.	C13 Easement #1
12/7/09	pH	8.8 s.u.	6.5-8.5 s.u.	S Trench Mid Easement #3
4/26/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	C13
4/26/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	SE Easement #2

4/26/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	S Trench Mid Easement #3
4/26/2014	Narrative	Fairly Clear water with some leaves/debris	Basin Plan at 4-11; Basin Plan at 4-16	R&D Parking #4
4/26/2014	Narrative	Very cloudy water/debris/leaves, solids	Basin Plan at 4-11; Basin Plan at 4-16	Emp. Parking Ent #5
2/6/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	C13
2/6/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	SE Outfall
2/6/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	S Trench Mid Easement #3
2/6/2014	Narrative	Leaves/debris	Basin Plan at 4-11	R&D Parking #4
2/6/2014	Narrative	Cloudy water/dirt/leaves	Basin Plan at 4-11; Basin Plan at 4-16	Emp. Parking Ent #5
5/6/2013	Narrative	Discharge cloudy/dirty	Basin Plan at 4-11; Basin Plan at 4-16	C13
5/6/2013	Narrative	Discharge cloudy/dirty	Basin Plan at 4-11; Basin Plan at 4-16	SE Outfall
5/6/2013	Narrative	Discharge cloudy/dirty	Basin Plan at 4-11; Basin Plan at 4-16	S Trench Mid Easement #3
5/6/2013	Narrative	Discharge had particles of debris, dirt & leaves	Basin Plan at 4-16	Emp. Parking Ent #5

4/1/2013	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	SE Outfall
4/1/2013	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	S Trench Mid Easement #3
4/1/2013	Narrative	Discharge had leaves/dirt	Basin Plan at 4-16	Emp. Parking Ent #5
1/25/2013	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	SE Outfall
1/25/2013	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	S Trench Mid Easement #3
1/25/2013	Narrative	Discharge had leaves/dirt	Basin Plan at 4-16	Emp. Parking Ent #5
11/8/2012	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	SE Outfall
11/8/2012	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	S Trench Mid Easement #3
10/11/2012	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	SE Outfall
10/11/2012	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	S Trench Mid Easement #3
12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	C13
12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	SE Outfall

12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	S Trench Mid Easement #3
12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	R&D Parking #4
12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	Emp. Parking Ent #5
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	C13
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	SE Outfall
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	S Trench Mid Easement #3
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	R&D Parking #4
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	Emp. Parking Ent #5
1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	C13
1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	SE Outfall
1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	S Trench Mid Easement #3
1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	R&D Parking #4

1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	Emp. Parking Ent #5
12/07/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	C13
12/7/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	SE Outfall
12/7/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	S Trench Mid Easement #3
12/7/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	R&D Parking #4
12/7/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	Emp. Parking Ent #5

The information in the above table reflects data gathered from James Hardie's self-monitoring during the 2009-2010, 2012-2013 and 2013-2014 wet seasons. CCAEJ alleges that during each of these wet seasons and continuing through today, James Hardie has discharged storm water contaminated with pollutants at levels or observations that exceed or violate the one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5 s.u. (Basin Plan);
- Floatables – Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-11);
- Suspended/Settleable Solids – Waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-16).

The following discharges of pollutants from the Facility contained concentrations of pollutants in excess of numeric water quality benchmarks established by EPA in the MGSP ("**EPA Benchmarks**"), evidencing past and ongoing violations of General Permit Discharge Prohibitions A(1) and A(2), Effluent Limitation B(3) and Receiving Water Limitations C(1) and C(2).

Date	Parameter	Observed Concentration	EPA Benchmarks	Location (as identified by the Facility)
4/25/2014	pH	9.2 s.u.	6-9 s.u.	#1 C13
2/6/2014	pH	9.1 s.u.	6-9 s.u.	#1 R&D Parking Lot
5/6/2013	pH	9.8 s.u.	6-9 s.u.	C13 Easement #1
1/26/10	pH	9.1 s.u.	6-9 s.u.	C13 Easement #1
4/25/2014	TSS	1700 mg/L	100 mg/L	#1 C13
4/25/2014	TSS	630 mg/L	100 mg/L	#2 S.E. Outfall
4/25/2014	TSS	240 mg/L	100 mg/L	#5 Employee Parking
2/6/2014	TSS	510 mg/L	100 mg/L	#1 R&D Parking Lot
2/6/2014	TSS	800 mg/L	100 mg/L	#2 S.E. Outfall
2/6/2014	TSS	320 mg/L	100 mg/L	#4 C-13
5/6/2013	TSS	940 mg/L	100 mg/L	C13 Easement #1
5/6/2013	TSS	540 mg/L	100 mg/L	SE Easement #2

1/26/2010	TSS	290 mg/L	100 mg/L	Emp. Parking Ent #5
4/25/2014	Iron	65 mg/L	1.0 mg/L	#1 C13
4/25/2014	Iron	21 mg/L	1.0 mg/L	#2 S.E. Outfall
4/25/2014	Iron	9.5 mg/L	1.0 mg/L	#5 Employee Parking
2/6/2014	Iron	31 mg/L	1.0 mg/L	#1 R&D Parking Lot
2/6/2014	Iron	23 mg/L	1.0 mg/L	#2 S.E. Outfall
2/6/2014	Iron	11 mg/L	1.0 mg/L	#4 C-13
2/6/2014	Iron	2.9 mg/L	1.0 mg/L	#5 Employee Parking
5/6/2013	Iron	140 mg/L	1.0 mg/L	C13 Easement #1
5/6/2013	Iron	16 mg/L	1.0 mg/L	SE Easement #2
5/6/2013	Iron	6.9 mg/L	1.0 mg/L	Emp. Parking Ent #5
10/11/2012	Iron	2.4 mg/L	1.0 mg/L	C13 Easement #1
10/11/2012	Iron	2.4 mg/L	1.0 mg/L	Emp. Parking Ent #5

2/10/2012	Iron	2.1 mg/L	1.0 mg/L	SE Easement #2
12/12/2011	Iron	2.2 mg/L	1.0 mg/L	C13 Easement #1
12/12/2011	Iron	1.9 mg/L	1.0 mg/L	SE Easement #2
12/12/2011	Iron	1.2 mg/L	1.0 mg/L	S Trench Mid Easement #3
12/12/2011	Iron	2.1 mg/L	1.0 mg/L	R&D Parking #4
12/12/2011	Iron	1.2 mg/L	1.0 mg/L	Emp. Parking Ent #5
1/30/2011	Iron	2.8 mg/L	1.0 mg/L	C13 Easement #1
1/30/2011	Iron	1.2 mg/L	1.0 mg/L	S Trench Mid Easement #3
1/30/2011	Iron	1.5 mg/L	1.0 mg/L	Emp. Parking Ent #5

The information in the above table reflects data gathered from James Hardie's self-monitoring during the 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 wet seasons. CCAEJ alleges that during each of those rainy seasons and continuing through today, James Hardie has discharged storm water contaminated with pollutants that exceed one or more applicable EPA Benchmarks, including, but not limited to, each of the following:

- Total Suspended Solids – 100 mg/L;
- pH – 6-9 s.u.;
- Iron – 1.0 mg/L.

CCAIEJ's investigation, including its review of James Hardie's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable

water quality standards and the EPA's benchmark values, indicate that James Hardie has not implemented BAT and BCT at the facility for its discharges of TSS, pH, Iron, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. James Hardie was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, James Hardie is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed in the table above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CCAEJ alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since at least November 21, 2009 and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CCAEJ alleges that James Hardie has discharged storm water containing impermissible levels of TSS, pH, Iron, and other pollutants in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.²

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, James Hardie is subject to penalties for violations of the General Permit and the Act since November 21, 2009.

b. Failure To Develop And Implement An Adequate Monitoring And Reporting Program.

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event."

² The rain dates in Attachment A are days on which an average of 0.1 or more rain fell as measured by a weather station located in Riverside approximately 14 miles away from the Facility. Data from the weather station is available at <http://www.ipm.ucanr.edu/WEATHER/SITES/riverside.html> (Last accessed on November 21, 2014). The rain dates also include days when the facility reported discharge in its Annual Reports.

The above-referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by James Hardie is not representative of the quality of the Facility's various storm water discharges and that the Facility failed to monitor all qualifying storm water discharges, CCAEJ alleges that the Facility's monitoring program violates Sections B(3), (4) and (7) of the General Permit.

CCAIEJ also alleges on information and belief that James Hardie failed to conduct visual observations in November 2009, March 2010, April 2010, April 2011, November 2011, January 2012, March 2013, October 2013, November 2013, December 2013, and March 2014 claiming that there were no qualifying rain events when in fact there were numerous such events during these periods.

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, James Hardie is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since November 21, 2009.

c. Failure To Analyze For Mandatory Parameters.

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit Section B(5)(a). Collected samples must be analyzed for Total Suspended Solids, pH, Specific Conductance and either Total Organic Carbon or O&G. *Id.* at Section B(5)(c)(i). Facilities must also analyze their storm water samples for "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities," including copper, lead, zinc, aluminum, chemical oxygen demand, and iron. *Id.* at Section B(5)(c)(ii); MSGP at 52, 102. Additionally, because James Hardie filed its NOI under SIC Code 3272, it must sample for the additional pollutants of Iron. *See* MSGP at 57, Table 8.E-1.

CCAIEJ's investigation of the James Hardie's monitoring data indicates that James Hardie failed to analyze for iron during the 2009-2010 wet season.

Each failure to analyze for mandatory parameters constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, James Hardie is subject to penalties for violations of the General Permit and the Act since November 21, 2009.

d. Failure To Prepare, Implement, Review and Update An Adequate Storm Water Pollution Prevention Plan.

Section A and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (hereinafter “SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (hereinafter “BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). The SWPPP must also include a certification statement and signature (General Permit, Section C(10)).

CCA EJ’s investigation of the conditions at the Facility as well as James Hardie’s Annual Reports indicate that James Hardie has been operating with an inadequately developed SWPPP in violation of the requirements set forth above. James Hardie has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. James Hardie has been in continuous violation of Section A and Provision E(2) of the General Permit every day since November 21, 2009, at the very latest, and will continue to be in violation every day that James

Hardie fails to prepare, implement, review, and update an effective SWPPP. James Hardie is subject to penalties for violations of the Order and the Act occurring since November 21, 2009.

e. Failure To File True And Correct Annual Reports.

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), C(10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

During the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014 wet seasons, James Hardie inaccurately certified in the Annual Report that the facility was in compliance with the General Permit. Consequently, James Hardie has violated Sections A(9)(d), B(14), C(9) and C(10) of the General Industrial Storm Water Permit every time James Hardie failed to submit a complete or correct report and every time James Hardie or its agents failed to comply with the Act. James Hardie is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since November 21, 2009.

III. Persons Responsible For the Violations.

CCA EJ puts James Hardie Building Products Inc., Luis Gries, Chris Davis and Haemish O'Donnell on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CCA EJ puts James Hardie Building Products Inc., Luis Gries, Chris Davis and Haemish O'Donnell on notice that it intends to include those persons in this action.

IV. Name And Address Of Noticing Parties.

The name, address and telephone number of CCA EJ is as follows:

Penny Newman
Executive Director
Center for Community Action and Environmental Justice
P.O. Box 33124
Jurupa Valley, CA 92519
Tel. (951) 360-8451

V. Counsel.

CCAIEJ has retained counsel to represent it in this matter. Please direct all communications to:

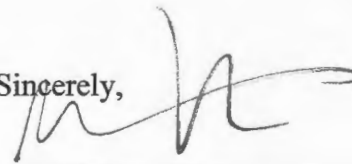
Gideon Kracov
The Law Office of Gideon Kracov
801 South Grand Avenue
11th Floor
Los Angeles, California 90017
Tel: (213) 629-2071
E-Mail: gk@gideonlaw.net

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects James Hardie to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, CCAIEJ will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CCAIEJ believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CCAIEJ intends to file a citizen suit under Section 505(a) of the Act against James Hardie and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CCAIEJ would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CCAIEJ suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CCAIEJ does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Gideon Kracov
The Law Office of Gideon Kracov
Attorneys for Center for Community Action and
Environmental Justice

SERVICE LIST

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
12000 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Jared Blumenfeld, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA 94105

Kurt V. Berchtold, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street
Suite 500
Riverside, CA 92501-3348

*Served via Certified Mail, Return Receipt Requested.

ATTACHMENT A**Rain Dates, James Hardie Building Products Inc., Fontana, California**

11/28/2009	12/7/2009	12/12/2009
12/13/2009	1/17/2010	1/18/2010
1/19/2010	1/20/2010	1/21/2010
1/22/2010	1/26/2010	2/5/2010
2/6/2010	2/09/2010	2/22/2010
2/27/2010	3/04/2010	3/06/2010
4/05/2010	4/12/2010	4/20/2010
4/22/2010	11/08/2010	11/20/2010
11/21/2010	11/24/2010	12/05/2010
12/06/2010	12/16/2010	12/18/2010
12/19/2010	12/20/2010	12/21/2010
12/22/2010	12/25/2010	12/29/2010
1/02/2011	1/03/2011	1/30/2011
2/16/2011	2/18/2011	2/19/2011
2/25/2011	2/26/2011	3/20/2011
3/21/2011	3/23/2011	4/08/2011
5/18/2011	7/31/2011	10/05/2011
11/04/2011	11/06/2011	11/12/2011
11/20/2011	12/12/2011	1/21/2012
1/23/2012	2/15/2012	2/27/2012
3/17/2012	3/18/2012	4/11/2012
4/13/2012	4/25/2012	4/26/2012
8/30/2012	10/11/2012	11/08/2012

12/12/2012

12/13/2012

12/24/2012

12/29/2012

1/24/2013

1/25/2013

2/08/2013

2/19/2013

3/08/2013

3/09/2013

5/06/2013

7/20/2013

10/09/2013

11/21/2013

12/07/2013

2/06/2014

2/28/2014

3/01/2014

4/01/2014

4/02/2014

4/25/2014